

**Zuni Indian Tribe Water Rights Settlement Agreement
Little Colorado River General Stream Adjudication**

**U.S. House of Representatives
Subcommittee on Water and Power-Testimony
Wilfred Eriacho, Sr., Chairman Zuni Water Rights Committee
April 1, 2003**

Introduction

Ko' don la:k'yadik'yana:we? (Literally speaking) How are all of you to this time of day?

By appointment from the Governor and Tribal Council, going back two terms, I have served on the Water Rights Team since 1994. I am especially grateful to have been given the task of presenting to you, members of the committee. I am very humbled to be in your presence. With me today to assist me in my presentation and to support the Zuni Indian Tribe Water Rights Settlement Agreement are Zuni Governor Arlen Quetawki, Sr., Tribal Councilman Edward Wemytewa, and the Zuni tribe's attorney, Ms. Jane Marx.

We appreciate your consideration and ask for your support for H.R. 495 which is identical to S.222, which has passed the Senate.

Overview

On behalf of past, present and future generations of *A:shiwi*, the Zuni people, we present our tribe's water needs for a most important and sacred ancient site. This most important and sacred place was created in very ancient times, as the final resting place, for all Zuni people who had transitioned into their spirit form to watch over and protect their Zuni children for as long as *Kohuwala:wa*, the Zuni Heaven shall exist. This settlement will satisfy our water needs and put finality on our tribe's many centuries of endeavors to restore its role as owners and stewards of our most sacred ancestral final resting place.

Honorable Congressmen, in our quest to re-establish our ownership and stewards of this most sacred place, we are all following in the footsteps of many great elected and traditional Zuni leaders. We are following in their footsteps to acquire lands and to continue to use *Kohuwala:wa*, or referred to as Zuni Heaven, to practice our religion which was created for us in time immemorial. Today, we are here to ask for your support and advocacy to approve this settlement so that our Zuni people can achieve the peace of mind and emotional security so necessary to maintain a positive style and so that we can begin the important tasks of restoring the sacred land to its formal wetlands conditions.

Significance of the Zuni Heaven and the Importance of Water

The name *Koluwala:wa* is made from the words for *Kokko* (kachina) and *luwalanne* (village). Therefore, the true translation of that sacred place name is Kachina Village. It is the ancient and sacred village occupied by the Kachinas who are the ancestor spirit beings of departed Zuni people. This is the village where the spirit beings of departed ancestors of the living Zuni people reside. These spirit beings have lived here from time immemorial and will live here to perpetuity. Countless generations of Zuni people have, with their individual and collective prayers, made sacred corn meal and food offerings to these spirit beings asking for good and long life trails, moisture for Earth Mother, plentiful crops, courage, strength and other good things in life.



An image from Sitegreaves 1851 mapping expedition. "Leroux Island-Little Colorado River", near the confluence of Little Colorado River and Zuni River, Zuni Heaven area.

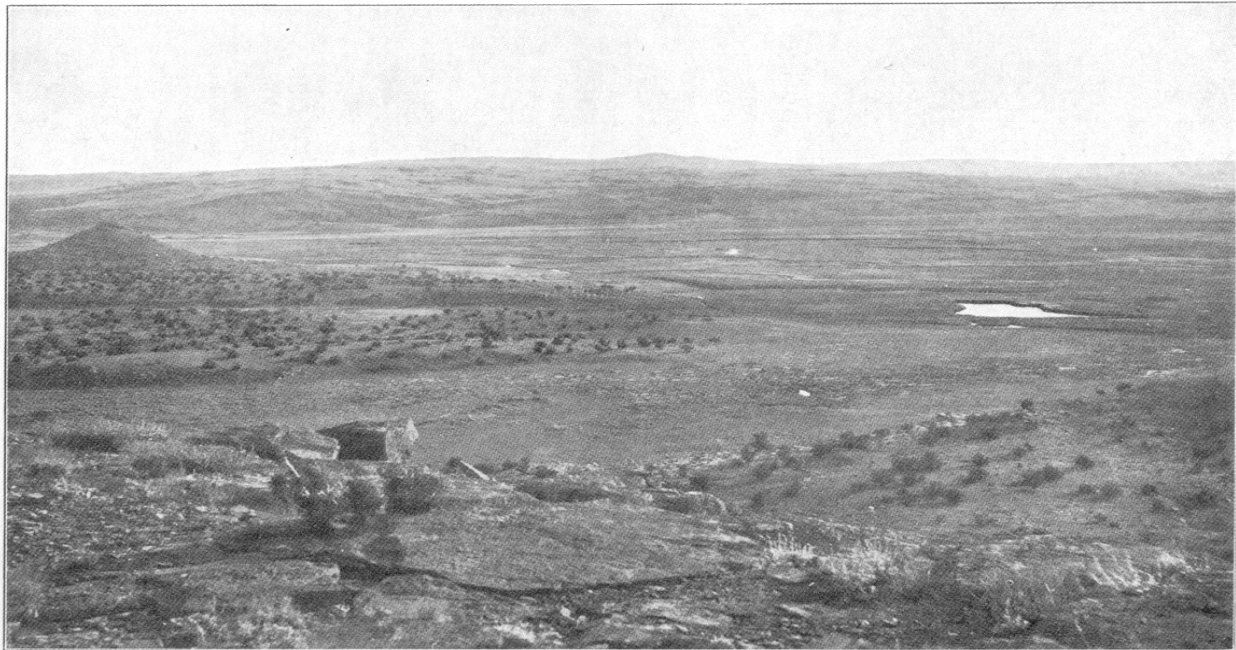
In very ancient times when Zuni Heaven was created and established for the Zuni people, oral tradition describes the land area as being very wet with a waist high deep and swift flowing river running through it. In these oral tradition stories, this river is called *K'yawa:na Ahonna* or Reddish Brown River referring to a deep and swift flowing silt laden river. Since that very ancient beginning, past and present generations of Zuni people believe that the spirit beings, residing at Zuni Heaven, are responsible for the origin of clouds for rain, snow, hail and sleet that will bless Earth Mother with their moisture. The Zuni people believe that in order for the spirit beings to perform their responsibility of originating clouds that will deliver moisture to Earth Mother, they must reside in a land that is blessed with an abundant supply of both underground and surface water. That is, the land must be in the same wetlands

conditions that existed when Zuni Heaven was first created and established. For this reason, the Zuni people have been very adamant about acquiring stable sources of and adequate quantities of water to be used to re-establish the wetland conditions that are needed by the spirit beings to bless Earth Mother with all forms of moisture.

The traditional Zuni religion has three major components. The first component is the Ancient Rain Priesthood. The second is the Kachinas and the third is the Medicine Orders. All of these different religious components cooperate and collaborate to pray for the continued physical, mental and emotional welfare of the Zuni people. In the overall scheme of the Zuni religion, the Kachinas component has a very direct relationship to Zuni Heaven as that is where the Kachina spirit beings reside in perpetuity. The Kachinas component of the Zuni religion is supported, promoted, practiced and maintained by members of the six kivas in the tribe. The Kachinas component of the Zuni religion is the most active and visible throughout the calendar year. Through and with this religion component, all Zuni people, young and old, have continual connection with their departed ancestors and children through prayers, sacred prayer meal and food offerings, dances and other activities.

BUREAU OF AMERICAN ETHNOLOGY

TWENTY-THIRD ANNUAL REPORT PL. IV



K'OTHLUWALA'WA, JUNCTION OF LITTLE COLORADO AND ZUNI RIVERS

Zuni Heaven area, sacred springs and *K'yawa:na Ahonna* or Reddish Brown River (LCR River).

During the many years of pre-history and history of the Zuni people, the practice of making a pilgrimage to Zuni Heaven has been maintained. Leaders of the six kivas and other appointees make this pilgrimage every four years, during early summer and normal non-drought years. During drought condition years, these pilgrimages were made on second or third years. A major purpose

for the pilgrimage is to beseech the spirit being residents for all forms of moisture so that Earth Mother can support all plant and animal life necessary to maintain the lives of her Zuni children. Other important purposes include the validation of the Zuni people's deep belief in the religion associated with the Zuni Heaven and the Kachina component of the Zuni religion. This pilgrimage is a very important and major religious event that involves practically all members of the tribe and many non-tribal friends. The pilgrimage to Zuni Heaven is made on the Sacred Moisture Trail of the Kachina Beings. This Sacred Moisture Trail is the entire length of the Zuni River which starts at the headwaters of the Zuni Mountains, to the east, and ends where it empties into the Little Colorado River. Along this Sacred Moisture Trail, many sacred springs and seeps are visited where prayers, sacred corn meal and food offerings are made. When at Zuni Heaven, the pilgrims harvest water, water plants and animals, and minerals to take back to Zuni to be used during the years' cycles of religious activities.

All forms and sources of water are most important and sacred to our Zuni people because from the dawn of their traditions and culture, farming has been a major life and culture sustaining occupation. Using the moisture absorbed by Earth Mother during the winter snows and the spring and summer rains, ancient Zuni farmers cultivated every available land to grow their precious corn along with other crops such as squash and beans. Traditional oral stories tell of ancient farmers cultivating fields irrigated by spreader dikes that controlled flood flows. To further validate the Zuni people as being skilled farmers, historical records show that during the early years of the American occupation of the current Zuni and Navajo land areas, Zuni farmers provided Fort Wingate and Fort Defiance Army Depots with enough corn and other crops to sustain their work efforts.

Because of the importance and sacredness of all forms and sources of water, all prayers and songs of the three major components of the Zuni religion contain language asking for rain and snow to ensure that all crops have enough water to finish their life paths to provide sustenance for their Zuni children. According to Zuni beliefs Zuni Heaven is the sacred place where all forms of moisture originate. Therefore in order for the Zuni people and their lands to be blessed with rain, snow, sleet and hail forever, we have worked very diligently with all non-Zuni parties, entities, townships and the State of Arizona to obtain what we hope will be a permanent and adequate source of water to restore our most sacred land. We will use this water to restore the land area to as close to original wetland conditions as is possible. Today, we are here to ask for your support and advocacy to approve this settlement so that our Zuni people can achieve peace of mind and emotional security that is so necessary to maintain our Zuni traditions and culture.

It is clear, therefore, why settlement rather than litigation is the preferable path for my people. As you know, in 1984 Congress set aside the Zuni Heaven Reservation for the express purpose of protecting the Tribe's long-standing religious and sustenance activities on those lands. As just described to you and testimony leading to passage of Pub. L. No. 98-498, 98 Stat. 1533 (August 28, 1984) revealed, water for riparian habitat and the Sacred Lake is essential to those activities, the very purpose for which Congress set aside the Reservation. That legislation, as amended by Pub. L. No. 101-486, 104 Stat. 1174 (October 31, 1990), addressed the lands to be protected but did not cover the Tribe's water needs. The United States on behalf of the Tribe, therefore, filed water rights claims in the Little Colorado River basin general adjudication which has been pending since 1979. The LCR adjudication involves thousands of parties, including five Indian tribes.

Despite the strength of Zuni's litigation claims relating to its use and occupation of the area encompassing Zuni Heaven and its waters since time immemorial, the Tribe was motivated by the desire to secure "wet" water and not just a "paper" water right. The settlement provides for real water to be acquired by the Tribe, in an area of the Little Colorado River basin where the surface water is already over appropriated and where there also exists significant groundwater demand. Equally important, the settlement also provides the resources to be able to restore the wetlands and riparian areas on our sacred lands, an outcome we would not obtain through litigation. This settlement, thus, restores the ecosystem necessary for our sacred practices and provides the parties, and Zuni in particular, the benefit of certainty and finality without spending numerous years and extensive resources in litigation. Moreover, this settlement resolves the Zuni Tribe's water rights claims with no adverse impacts on the water rights of any party in the LCR litigation.

Overview of The Settlement

This settlement is the culmination of the Tribe's attempts to protect and restore the sacred lands of Zuni Heaven. The Tribe's litigation claims are satisfied by providing water and resources to rehabilitate and restore to the Reservation a riparian habitat for the Tribe's religious and sustenance activities.

Description of the Restoration Project and Water Needs

Our restoration project will take a number of years to accomplish. Simply described, it involves acquisition of water rights, use of groundwater, aggradation of the LCR stream channel, removal of exotic plants that impede restoration of the wetlands, and planting and maintenance of native plant species. Although our goal is to restore the area to as close to natural, pre-development conditions as possible, certain hydrologic conditions may have been permanently altered by upstream dams and surface water diversions as well as extensive groundwater pumping; significant engineering planning and

design is needed, as well as the “artificial” maintenance of certain wetland and riparian areas. We will endeavor to create as natural an environment as is reasonably possible.



Breeched Zion Dam upstream of Zuni Heaven. Silt trapped in the Zion Dam will be carried by flood flows to the silt hungry Little Colorado River channel downstream to aggrade the channel.

With regard to the water requirements, the settlement provides Zuni a minimum of 5,500 acre-feet per year (afy) of water to develop and maintain its wetland restoration project. The Tribe will use both groundwater and surface water. Importantly, the parties set out to provide water to the Tribe without disrupting, to the greatest extent possible, the existing uses and expectations of the parties. The mechanism to accomplish this goal includes the voluntary acquisition of surface water rights from willing sellers in an area where water uses are changing and irrigation is declining. In the long run, the Tribe needs to acquire a total of at least 3,600 afy of surface water. The remainder of the minimum 5,500 afy of water needs will be met through appropriation of flood-type flows, development and “harvesting” of water from Zuni lands upstream of the Reservation, and groundwater pumping. The settlement recognizes the right of the Tribe to withdraw 1,500 of groundwater free from objection by the parties. Notably, Zuni will need to acquire 2,350 afy of surface water rights over the next few years in order to effectuate the settlement and waive its claims.

The Tribe's project includes two phases: a core, initial wetland development area that includes restoration of Hadin K'yaya, the Tribe's Sacred Lake. This area will be developed immediately using groundwater, and will be maintained in perpetuity even in periods of drought. The secondary wetland area will be developed using surface water, after the Little Colorado River channel has been aggraded, or raised up, on the Reservation, through removal of sediment upstream and relocation of that sediment to Zuni Heaven. The extent of the secondary wetland area is expected to fluctuate depending on surface water availability in wetter or dryer years.

As noted above, the surface water rights will be acquired pursuant to state law. As such they will carry the associated state law priority dates. However, of great significance to the Tribe, once those rights have been acquired and severed and transferred to the reservation, the water takes on key attributes of a federal right: the water rights shall be held in trust by the United States in perpetuity, the water rights cannot be lost by abandonment or forfeiture, state law does not apply to water uses on the Reservation, and the state has no authority to regulate or tax the use of the water. The settlement provides similar protection for the Tribe's use of 1,500 cfs of groundwater on the Reservation.

Contributions; Development Fund

The settlement provides for a unique partnership among the Tribe, the United States, the State of Arizona, and certain individual parties to accomplish the goals of this settlement. First, in addition to the financial contribution of \$19.25 million requested of the United States, the state parties, including the State of Arizona and other major groundwater pumpers, are contributing roughly \$8 to \$9 million dollars toward this settlement, and the Zuni Tribe itself has spent close to \$5 million dollars to acquire certain key lands and water essential to the success of the project. The extent of shared funding is unprecedented in water rights settlements. Equally important, however, is the creative use of state programs to support the restoration and environmental goals of this settlement. In addition to contributions from its general funds, the State of Arizona is using two state programs aimed at endangered species protection and habitat conservation to fund its contribution to this settlement. Through use of these state funds, the Tribe will receive water rights to be used for its wetland restoration project as well as dollars that will be spent for wetland restoration and maintenance purposes. Ultimately, these efforts along the Little Colorado River stream will create more habitats for threatened and endangered species. Through this partnership, Zuni restores its sacred lands, and environmental protection goals are met.

This agreement will establish the Zuni Indian Tribe Water Rights Development Fund managed by the Department of Interior into which the contributions from the State of Arizona and the United States will be deposited. From the federal contribution of \$19.25 million, \$3.5 million dollars will be made available immediately to secure water rights so that the settlement agreement can become enforceable. The remaining funds will be made available after the enforcement date. The Zuni Indian Tribe has extensive working knowledge of trust funds management and investment by the U.S. Treasury Department and Department of Interior's Office of Trust Funds Management. Our tribe has prudently used funds from prior settlement of land claims. We have used the prescribed regulatory process for drawing down funds under Secretarial control. We have also exercised the option of withdrawing monies under the American Indian Trust Fund Management Reform Act of 1994. The Congressional route for withdrawing of funds has also been successfully used by our Tribe.

The Zuni Indian Tribe will use the settlement Development Fund in the manner prescribed by this proposed legislation and by the terms embodied in the agreement. Our trustees at the Southwest Regional office and the Office of Trust Funds Management are extremely aware of our adherence to federal fiduciary standards, but more importantly, to the fiduciary standards of my people. We have met these standards in the past, and we will meet the standards contemplated in this legislation in furtherance of our restoration goals.

Rationale for Certain Waivers and Compromise

This settlement represents many hours of working with my people to develop a workable vision and concept for restoring our sacred Zuni Heaven given the present conditions at the Reservation. In addition, the settlement is the result of more than four years of extensive negotiations involving my water rights team and our water rights attorneys. As such, it contains negotiated compromises, some of which were arrived at only after a great deal of discussion and deliberation. Several provisions, described below, required a great deal of "soul-searching" and discussion by Zuni's water rights team and Council. We firmly believe, however, that this settlement, even with some difficult compromises, provides the best possible approach to securing an adequate amount of water of sufficient quality for our religious practices.

The first of the significant compromises relates to taking lands into trust. As mentioned above, the Tribe has acquired certain lands near the Reservation that are critical to our ability to gather and send water down the Little Colorado River channel to the Reservation. Other lands along the LCR are also important to the project. To further this settlement and the needs of some parties to have certainty about the status of these lands now and in the future, the Tribe

identified a key corridor along the LCR that contains lands we now own or may acquire in the future that will be taken into trust as part of this settlement. One section of land adjacent to the Reservation will also be made part of the Reservation; it is the expected location of much of the Tribe's groundwater pumping. The legislation provides that only these lands in Arizona will be taken into trust, absent a subsequent act of Congress authorizing additional lands into trust for Zuni.

Before any lands may be taken into trust, the Tribe, the State of Arizona, and Apache County will enter into an intergovernmental agreement covering a number of water and land use issues that are identified in the settlement agreement. These issues include, for example, adoption of a tribal water code, jurisdiction by the Tribe over wildlife management, payments by the Tribe in lieu of state taxes, rights-of-way or easements for adjoining landowners, and protection of land remaining in fee status for the Tribe's religious practices. We support the intergovernmental agreement approach as a useful mechanism for sovereign governments to use to facilitate their relationship. After considering the nature of our land and water use in Arizona for sustaining our religion and culture, lands which are not the site of my people's homes or economic livelihood, we are also comfortable with the substantive agreements within the provisions to be covered by the intergovernmental agreement and believe they strike a reasonable balance of interests.

The next area of significant compromise relates to waiver of future water quality claims. We know that this waiver covers new ground in a water rights settlement. Again, after a great deal of deliberation and consideration of the specific circumstances of this settlement, we are comfortable with the compromises contained in the approach to waiver of these future claims. Circumstances may differ in another case where, for example, a reservation is a homeland and is located in an area with more industrial or other development. Moreover, in our negotiations, we agreed to try to reach a settlement that would, as much as possible, maintain the status quo and the parties' existing water use expectations. This may not be a goal in another context. From the Tribe's perspective here, the location of the Reservation in a relatively undeveloped area of Arizona, combined with the state parties' agreement to provide water quality monitoring and data on an ongoing basis, along with the broad retention of regulatory authority by the United States to address water quality or environmental problems that may arise, provide us adequate assurance that a serious problem will not go unremedied, even if the Tribe is limited in the type of claims it can assert. On balance, Zuni believes that the overall benefits to us of this settlement outweigh the risks associated with the limited waiver of future water quality claims.

Finally, I want to discuss briefly the issue of the timing of the Tribe's waiver of litigation claims and the acquisition of water rights as a condition precedent to

such a waiver. As I mentioned earlier, the Tribe needs to acquire 3,600 afy of surface water rights in order to develop its project. The Tribe will waive its claims, however, when 2,350 afy of the necessary 3,600 afy of surface water is acquired. This must be accomplished by the end of December 2006. Clearly, there is a risk to the Tribe of waiving its claims before it has acquired all of the necessary water rights. However, after significant thought, we felt it the wisest use of time and resources to structure the settlement in this fashion, for several reasons. First, under the settlement agreement and legislation, the Tribe has early access to \$3.5 million dollars in order to secure the necessary 2,350 afy of water. Given the voluntary nature of the water acquisitions, we have attempted to strike an appropriate balance between a reasonably short time frame to determine whether the settlement will become finally enforceable, and a reasonable guess as to the amount of water at a reasonable price we expect could be acquired within the limited time frame. We did not want to be in a situation where we are forced to pay too much for any particular water right in order to satisfy the time deadlines, yet we need to know that we can reasonably expect to secure sufficient surface water to develop the project. The 2,350 afy amount is the parties' best estimate as to the amount of water at a reasonable price that we can anticipate acquiring with the initial funds by December 2006. We will then acquire the remainder of the water rights over time, with the State of Arizona expecting to contribute approximately 1,000 afy of water over the next fifteen years. We believe that this approach is fiscally sound and, in conjunction with our ability to use groundwater, provides us enough certainty about the ability to develop the entire wetland restoration project over time.

Conclusion

This water rights settlement agreement will enable the Zuni people to restore their most sacred land area to the way it was as described in ancient traditional historical accounts. It will enable them to develop wetlands for water plants, birds and other animals so important and necessary in carrying on the Zuni Kachina religion. Furthermore, it will ease the minds and hearts of the people knowing that the spirits of their ancestors will once again, be living in the wetland conditions as were the land conditions at the very beginning. Past and present Zuni Tribal Councils, it's Water Rights Team members, and tribal religious leaders have worked closely and reasonably with all non-Zuni parties to keep whole their water rights and land interests and at the same time, secure our interest to water and land for our sacred lands. The leaders of the tribal civil government, the religious leaders and the Zuni people are satisfied with the terms of this settlement and respectfully ask that you approve it. Initial work has already begun to re-establish the wetland conditions of the Sacred Lake area and adjacent Little Colorado River channel. The several sources of funds for wetland restoration work efforts will be sufficient to continue the work already started. We all know that it will take many years of sustained work efforts and funds to restore our sacred lands to the way that they were in

the beginning. However, with this settlement, we have all made a good start and will continue the work efforts for as long as it will take.

We firmly believe that with this settlement, the Zuni people and our non-Zuni neighbors, townships, entities and the State of Arizona have gained benefits that are so much better than a lengthy and expensive litigation. Expensive and protracted litigations may still remain for the northern reaches of the Little Colorado River, however, at least one portion will be forever resolved with the approval of this settlement. We further believe that the United States, on behalf of the Zuni tribe, will have fulfilled its trust obligations with the approval of this settlement.

Esteemed members of the House of Representatives, on behalf of our Zuni people, I humbly ask and urge you to support the ratification of this proposed legislation for the water rights of the Zuni people at their most sacred land. As a representative of the Zuni tribe's religious leaders and the Zuni Tribal Council, I bequeath on each of you a long and valued life trail. Don dek'ohanan yanitchiy a:dehy a:wona:ya:du. Elahkwa, don yadon k'okshi' sunnahk'yanapdu. Thank you, may you spend a good day to the evening time.